

**SENATE BILL**

**No. 5**

**Introduced by Senator Ducheny**

May 17, 2005

An act to add Sections 31460.2, 31461.7, 31461.8, 31569, and 31571 to, and to repeal and add Sections 31460, 31461, and 31539 of, to add Article 3 (commencing with Section 45350) to Chapter 2 of Division 5 of Title 4 of, and to add Article 1.55 (commencing with Section 53224.1) to Chapter 2 of Part 1 of Division 2 of Title 5 of, the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as introduced, Ducheny. Public employees' retirement.

The County Employees Retirement Law of 1937 sets forth a comprehensive system of retirement benefits for county and district employees. The law defines the terms "compensation" and "compensation earnable" for the purposes of determining contributions and benefits. The law establishes how errors resulting from fraud or overstatement may be corrected in a retired member's allowance, and establishes a 10-year period of limitation of actions in this regard. Existing law also authorizes a general law city to establish a retirement system for its officers and employees and provide for the payment of retirement allowances, pensions, and disability and death benefits, and further authorizes the legislative body of a local agency to establish a pension trust, as specified, membership in which may be optional or compulsory.

This bill would recast and revise the terms "compensation" and "compensation earnable" for the purposes of the County Employees Retirement Law of 1937, and would define these terms for the

purposes of the city and local agency retirement systems and pension trusts described above.

For the purposes of each of the retirement systems and pension trusts described above, the bill would establish compensation reporting requirements, would define “labor policy or agreement” for these purposes, and would require a board of retirement to promulgate specified regulations in connection with the definition of compensation earnable.

The bill would also require that final compensation, for the purpose of determining a pension or benefit resulting from service as an elective or appointed officer, as a mayor or a member of a city legislative body, or as a member of a local agency legislative body, as specified, be based on the highest average annual compensation earnable by the member during the period of service in each elective or appointed office. The bill would permit a member in this instance to have more than one final compensation. These provisions would apply to members elected or appointed on and after January 1, 2006.

For service rendered on and after January 1, 2006, the bill would exclude from compensation, in specified instances, compensation based on overtime, and would prescribe how the service for members rendering service in 2 or more categories would be calculated. [PU RN20051295304 ]

For the purposes of the County Employees Retirement Law of 1937, the bill would revise and recast the provisions for the correction of errors based on fraud or overstatement. For the purposes of each of the retirement and pension trust provisions described above, the bill would provide that the mutual obligations of employers, retirement systems, and members of retirement systems are ongoing until all their various obligations have been discharged, and would provide for the adjustment of errors and omissions in payments in and out of a retirement fund. Among other things, the bill would establish for a statute of limitations on a retirement system’s collection of an erroneous payment to a member or beneficiary as 3 years from the date of payment. [PU RN20051295304 ]

The bill would require a county, district, city, or local agency that fails to enroll an eligible employee, as specified, to pay all arrears costs for member contributions and administrative costs of \$500 as a reimbursement. The bill would exclude persons rendering professional legal services from membership in the retirement system, except in specified instances.

The bill would provide that its provisions addressing city retirement systems and local agency pension trusts apply to persons first retiring on and after January 1, 2007.

The bill would provide that its provisions become operative January 1, 2006.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 31460 of the Government Code is  
2 repealed.

3 ~~31460. “Compensation” means the remuneration paid in cash~~  
4 ~~out of county or district funds, plus any amount deducted from a~~  
5 ~~member's wages for participation in a deferred compensation~~  
6 ~~plan established pursuant to Chapter 8 (commencing with~~  
7 ~~Section 18310) of Part 1 of Division 5 of Title 2 or pursuant to~~  
8 ~~Article 1.1 (commencing with Section 53212) of Chapter 2 of~~  
9 ~~Part 1 of Division 2 of Title 5, but does not include the monetary~~  
10 ~~value of board, lodging, fuel, laundry, or other advantages~~  
11 ~~furnished to a member.~~

12 SEC. 2. Section 31460 is added to the Government Code, to  
13 read:

14 31460. (a) “Compensation” means the remuneration paid  
15 out of funds controlled by the county or district in payment for  
16 the member’s services performed during normal working hours  
17 or for time during which the member is excused from work  
18 because of any of the following:

19 (1) Holidays.

20 (2) Sick leave.

21 (3) Industrial disability leave, during which benefits are  
22 payable pursuant to Section 4850 of the Labor Code.

23 (4) Vacation.

24 (5) Compensatory time off.

25 (6) Leave of absence.

26 (b) When compensation is reported to the board, the county or  
27 district shall identify the pay period in which the compensation  
28 was earned regardless of when reported or paid. Compensation  
29 shall be reported in accordance with Section 31461 and shall not  
30 exceed compensation earnable, as defined in Section 31461.

1 SEC. 3. Section 31460.2 is added to the Government Code, to  
2 read:

3 31460.2. “Labor policy or agreement” means any written  
4 policy, agreement, memorandum of understanding, legislative  
5 action of the board of supervisors or the district board, or any  
6 other document used by the county or district to specify the  
7 payrate, special compensation, and benefits of represented and  
8 unrepresented employees.

9 SEC. 4. Section 31461 of the Government Code is repealed.

10 ~~31461. “Compensation earnable” by a member means the~~  
11 ~~average compensation as determined by the board, for the period~~  
12 ~~under consideration upon the basis of the average number of days~~  
13 ~~ordinarily worked by persons in the same grade or class of~~  
14 ~~positions during the period, and at the same rate of pay. The~~  
15 ~~computation for any absence shall be based on the compensation~~  
16 ~~of the position held by the member at the beginning of the~~  
17 ~~absence. Compensation, as defined in Section 31460, that has~~  
18 ~~been deferred shall be deemed “compensation earnable” when~~  
19 ~~earned, rather than when paid.~~

20 SEC. 5. Section 31461 is added to the Government Code, to  
21 read:

22 31461. (a) “Compensation earnable” by a member means the  
23 payrate and special compensation of the member, as defined by  
24 subdivisions (b) and (c).

25 (b) (1) “Payrate” means the normal monthly rate of pay or  
26 base pay of the member paid in cash to similarly situated  
27 members of the same group or class of employment for services  
28 rendered on a full-time basis during normal working hours.  
29 “Payrate” for a member who is not in a group or class means the  
30 monthly rate of pay or base pay of the member, paid in cash and  
31 pursuant to publicly available pay schedules, for services  
32 rendered on a full-time basis during normal working hours.  
33 “Payrate” includes:

34 (A) Any amount deducted from a member’s salary for any of  
35 the following:

36 (i) Participation in a deferred compensation plan established  
37 pursuant to Article 1.1 (commencing with Section 53212) of  
38 Chapter 2 of Part 1 of Division 2 of Title 5.

39 (ii) Payment for participation in a retirement plan that meets  
40 the requirements of Section 457 of the Internal Revenue Code.

1 (iii) Payment into a money purchase pension plan and trust  
2 that meets the requirements of Section 401(a) of the Internal  
3 Revenue Code.

4 (iv) Participation in a flexible benefits program.

5 (B) Any payment in cash by the member's employer to one  
6 other than an employee for the purpose of purchasing an annuity  
7 contract for a member under an annuity plan that meets the  
8 requirements of Section 403(b) of the Internal Revenue Code.

9 (C) Employer "pick up" of member contributions that meets  
10 the requirements of Section 414(h)(2) of the Internal Revenue  
11 Code.

12 (D) Any disability or workers' compensation payments to  
13 safety members in accordance with Section 4850 of the Labor  
14 Code.

15 (2) The computation for any leave without pay of a member  
16 shall be based on the compensation earnable by him or her at the  
17 beginning of the absence.

18 (3) The computation for time prior to entering county or  
19 district service shall be based on the compensation earnable by  
20 him or her in the position first held by him or her in that service.

21 (c) (1) Special compensation of a member includes any  
22 payment received for special skills, knowledge, abilities, work  
23 assignment, workdays or hours, or other work conditions.

24 (2) Special compensation shall be limited to that which is  
25 received by a member pursuant to a labor policy or agreement or  
26 as otherwise required by state or federal law, to similarly situated  
27 members of a group or class of employment that is in addition to  
28 payrate.

29 (3) Special compensation shall be for services rendered during  
30 normal working hours and, when reported to the board, the  
31 county or district shall identify the pay period in which the  
32 special compensation was earned.

33 (4) The monetary value of any service or noncash advantage  
34 furnished by the employer to the member, except as expressly  
35 and specifically provided in this chapter, shall not be special  
36 compensation unless regulations promulgated by the board  
37 specifically determine that value to be "special compensation."

38 (5) The board shall promulgate regulations that delineate more  
39 specifically and exclusively what constitutes "special  
40 compensation" as used in this section. A uniform allowance, the

monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under the Fair Labor Standards Act (29 U.S.C. Secs. 201 to 219, inclusive) shall be included as special compensation and appropriately defined in those regulations. The board shall incorporate in its definitions of special compensation, applicable provisions of Section 571 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations.

(6) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

(e) (1) As used in this part, “group or class of employment” means a number of employees considered together because they share job similarities, work location, collective bargaining unit, or other logical work related grouping. Under no circumstances shall one employee be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employee, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification.

(f) As used in this part, “final settlement pay” means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay. The board shall incorporate in its definitions of final settlement pay applicable provisions of Section 570 of Article 4 of

1 Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the  
2 California Code of Regulations.

3 SEC. 6. Section 31461.7 is added to the Government Code, to  
4 read:

5 31461.7. Notwithstanding any other provision of this chapter,  
6 “final compensation” of a member for the purpose of determining  
7 any pension or benefit resulting from service as an elective or  
8 appointed officer on a district governing body or a county board  
9 of supervisors accrued while in membership, shall be based on  
10 the highest average annual compensation earnable by the  
11 member during the period of service in each elective or  
12 appointed office. If that elective or appointed service is a  
13 consideration in the computation of any pension or benefit, the  
14 member may have more than one final compensation.

15 This section shall apply to a member first elected or appointed  
16 to a district governing body or a county board of supervisors on  
17 or after January 1, 2006, or elected or appointed to a term of  
18 office not consecutive with the term of office held on January 1,  
19 2006.

20 SEC. 7. Section 31461.8 is added to the Government Code, to  
21 read:

22 31461.8. If the compensation of a member is a factor in any  
23 computation to be made under this chapter, there shall be  
24 excluded from those computations any compensation based on  
25 overtime put in by a member whose service retirement allowance  
26 is a fixed percentage of final compensation for each year of  
27 credited service. For the purposes of this chapter, overtime is the  
28 aggregate service performed by an employee as a member in all  
29 categories of employment in excess of the hours of work  
30 considered normal for employees on a full-time basis, and for  
31 which monetary compensation is paid.

32 If a member concurrently renders service in two or more  
33 positions, one or more of which is full time, service in the  
34 part-time position shall constitute overtime. If two or more  
35 positions are permanent and full time, the position with the  
36 highest payrate or base pay shall be reported to the retirement  
37 system. This provision shall apply only to service rendered on or  
38 after January 1, 2006.

39 SEC. 8. Section 31539 of the Government Code is repealed.

1     ~~31539. (a) The board of retirement may, in its discretion,~~  
2     ~~correct any error made in the calculation of a retired member's~~  
3     ~~monthly allowance or any other benefits under this chapter, if~~  
4     ~~either of the following exist:~~

5     ~~(1) The error in the calculation of the member's monthly~~  
6     ~~allowance or other benefits under this chapter was made as a~~  
7     ~~result of fraudulent reports for compensation made, or caused to~~  
8     ~~be made, by the member for his or her own benefit.~~

9     ~~(2) The member caused his or her final compensation to be~~  
10    ~~improperly increased or otherwise overstated at the time of~~  
11    ~~retirement and the system applied that overstated amount as the~~  
12    ~~basis for calculating the member's monthly retirement allowance~~  
13    ~~or other benefits under this chapter.~~

14    ~~(b) The retirement allowance or other benefits under this~~  
15    ~~chapter with respect to a retired member described in subdivision~~  
16    ~~(a) shall be adjusted prospectively to the amount that would have~~  
17    ~~been payable if the overstatement of the member's final~~  
18    ~~compensation had not occurred.~~

19    ~~(c) Adjustment of the member's retirement allowance or other~~  
20    ~~benefits may also be implemented retroactively and include the~~  
21    ~~collection or return of the overpayment of benefits. The board of~~  
22    ~~retirement may direct staff to correct the overpayment of benefits~~  
23    ~~by offsetting the amount to be recovered against future benefits.~~  
24    ~~Adjustments to correct the overpayment of benefits may also be~~  
25    ~~made by adjusting the allowance so that the retired member or~~  
26    ~~the retired member and his or her beneficiary, as the case may be,~~  
27    ~~will receive the actuarial equivalent of the allowance to which~~  
28    ~~the member is entitled.~~

29    ~~(d) The rights and remedies provided in this section are in~~  
30    ~~addition to any other rights and remedies any party may have at~~  
31    ~~law or in equity. Nothing in this section shall preclude any party~~  
32    ~~from instituting an action for declaratory or other relief in lieu of~~  
33    ~~proceeding under this section.~~

34    ~~(e) The period of limitation of actions under this section shall~~  
35    ~~be 10 years and that period shall commence either from the date~~  
36    ~~of payment or upon discovery of the facts described in~~  
37    ~~subdivision (a), whichever date is later. The board shall~~  
38    ~~determine the applicability of the period of limitation in any case,~~  
39    ~~and its determination with respect to the running of any period of~~



1 ~~limitation shall be conclusive and binding for purposes of~~  
2 ~~correcting the error.~~

3 SEC. 9. Section 31539 is added to the Government Code, to  
4 read:

5 31539. (a) The obligations of the retirement system to its  
6 members continue throughout their respective memberships, and  
7 the obligations of the retirement system to and in respect to  
8 retired members continue throughout the lives of the respective  
9 retired members, and thereafter until all obligations to their  
10 respective beneficiaries under optional settlements have been  
11 discharged. The obligations of the county or district to the  
12 retirement system in respect to members employed by them,  
13 respectively, continue throughout the memberships of the  
14 respective members, and the obligations of the county or district  
15 to the retirement system in respect to retired members formerly  
16 employed by them, respectively, continue until all of the  
17 obligations of the retirement system in respect to those retired  
18 members, respectively, have been discharged. The obligations of  
19 any member to the retirement system continue throughout his or  
20 her membership, and thereafter until all of the obligations of the  
21 retirement system to or in respect to him or her have been  
22 discharged.

23 (b) For the purposes of payments into or out of the retirement  
24 fund for adjustment of errors or omissions, the period of  
25 limitation of actions shall be three years, and shall be applied as  
26 follows:

27 (1) In cases in which the retirement system makes an  
28 erroneous payment to a member or beneficiary, the system's  
29 right to collect shall expire three years from the date of payment.

30 (2) In cases in which the retirement system owes money to a  
31 member or beneficiary, the period of limitations shall not apply.

32 (3) In cases in which payment is erroneous because of the  
33 death of the retired member or beneficiary or because of the  
34 remarriage of the beneficiary, the period of limitation shall  
35 commence with the discovery of the erroneous payment.

36 (c) Notwithstanding subdivision (b), the period of limitation  
37 shall be 10 years and that period shall commence either from the  
38 date of payment or upon discovery of the fraudulent reporting,  
39 whichever date is later, if any payment has been made as a result  
40 of either of the following:

1 (1) Fraudulent reports for compensation made, or caused to be  
2 made, by a member for his or her own benefit.

3 (2) The member causing his or her final compensation to be  
4 improperly increased or otherwise overstated at the time of  
5 retirement.

6 (d) The board shall determine the applicability of the period of  
7 limitations in any case, and its determination with respect to the  
8 running of any period of limitation shall be conclusive and  
9 binding for purposes of correcting the error or omission.

10 SEC. 10. Section 31569 is added to the Government Code, to  
11 read:

12 31569. Any county or district that fails to enroll an employee  
13 into membership when he or she becomes eligible, or within 90  
14 days thereof, when the employer knows or can reasonably be  
15 expected to have known of that eligibility shall be required to pay  
16 all arrears costs for member contributions and administrative  
17 costs of five hundred dollars (\$500) per member as a  
18 reimbursement to the system's current year budget.

19 SEC. 11. Section 31571 is added to the Government Code, to  
20 read:

21 31571. (a) Except as otherwise provided in this chapter, and  
22 as provided in subdivision (b), persons rendering professional  
23 legal services to a city or a county are excluded from  
24 membership.

25 (b) Subdivision (a) does not apply the following:

26 (1) A person holding the office of city attorney, the office of  
27 assistant city attorney, or an established position of deputy city  
28 attorney.

29 (2) A person holding the office of district attorney or county  
30 counsel, the office of assistant district attorney or assistant  
31 county counsel, or an established position of deputy district  
32 attorney or deputy county counsel.

33 SEC. 12. Article 3 (commencing with Section 45350) is  
34 added to Chapter 2 of Division 5 of Title 4 of the Government  
35 Code, to read:

36  
37 Article 3. Retirement Benefit Calculation

38  
39 45350. (a) "Compensation" means the remuneration paid out  
40 of funds controlled by the city in payment for the member's

1 services performed during normal working hours or for time  
2 during which the member is excused from work because of any  
3 of the following:

4 (1) Holidays.

5 (2) Sick leave.

6 (3) Industrial disability leave, during which benefits are  
7 payable pursuant to Section 4850 of the Labor Code.

8 (4) Vacation.

9 (5) Compensatory time off.

10 (6) Leave of absence.

11 (b) When compensation is reported to the retirement board, the  
12 city shall identify the pay period in which the compensation was  
13 earned regardless of when reported or paid. Compensation shall  
14 be reported in accordance with Section 45352 and shall not  
15 exceed compensation earnable, as defined in Section 45352.

16 44351. “Labor policy or agreement” means any written  
17 policy, agreement, memorandum of understanding, legislative  
18 action of the city legislative body, or any other document used by  
19 the city to specify the payrate, special compensation, and benefits  
20 of represented and unrepresented employees.

21 45352. (a) “Compensation earnable” by a member means the  
22 payrate and special compensation of the member, as defined by  
23 subdivisions (b) and (c).

24 (b) (1) “Payrate” means the normal monthly rate of pay or  
25 base pay of the member paid in cash to similarly situated  
26 members of the same group or class of employment for services  
27 rendered on a full-time basis during normal working hours.  
28 “Payrate” for a member who is not in a group or class means the  
29 monthly rate of pay or base pay of the member, paid in cash and  
30 pursuant to publicly available pay schedules, for services  
31 rendered on a full-time basis during normal working hours.  
32 “Payrate” includes:

33 (A) Any amount deducted from a member’s salary for any of  
34 the following:

35 (i) Participation in a deferred compensation plan established  
36 pursuant to Article 1.1 (commencing with Section 53212) of  
37 Chapter 2 of Part 1 of Division 2 of Title 5.

38 (ii) Payment for participation in a retirement plan that meets  
39 the requirements of Section 457 of the Internal Revenue Code.

1 (iii) Payment into a money purchase pension plan and trust  
2 that meets the requirements of Section 401(a) of the Internal  
3 Revenue Code.

4 (iv) Participation in a flexible benefits program.

5 (B) Any payment in cash by the city to one other than an  
6 employee for the purpose of purchasing an annuity contract for a  
7 member under an annuity plan that meets the requirements of  
8 Section 403(b) of the Internal Revenue Code.

9 (C) Employer “pick up” of member contributions that meets  
10 the requirements of Section 414(h)(2) of the Internal Revenue  
11 Code.

12 (D) Any disability or workers’ compensation payments to  
13 safety members in accordance with Section 4850 of the Labor  
14 Code.

15 (2) The computation for any leave without pay of a member  
16 shall be based on the compensation earnable by him or her at the  
17 beginning of the absence.

18 (3) The computation for time prior to entering city service  
19 shall be based on the compensation earnable by him or her in the  
20 position first held by him or her in that service.

21 (c) (1) Special compensation of a member includes any  
22 payment received for special skills, knowledge, abilities, work  
23 assignment, workdays or hours, or other work conditions.

24 (2) Special compensation shall be limited to that which is  
25 received by a member pursuant to a labor policy or agreement or  
26 as otherwise required by state or federal law, to similarly situated  
27 members of a group or class of employment that is in addition to  
28 payrate.

29 (3) Special compensation shall be for services rendered during  
30 normal working hours and, when reported to the retirement  
31 board, the city shall identify the pay period in which the special  
32 compensation was earned.

33 (4) The monetary value of any service or noncash advantage  
34 furnished by the city to the member, except as expressly and  
35 specifically provided in this chapter, shall not be special  
36 compensation unless regulations promulgated by the retirement  
37 board specifically determine that value to be “special  
38 compensation.”

39 (5) The retirement board shall promulgate regulations that  
40 delineate more specifically and exclusively what constitutes

1 “special compensation” as used in this section. A uniform  
2 allowance, the monetary value of city-provided uniforms, holiday  
3 pay, and premium pay for hours worked within the normally  
4 scheduled or regular working hours that are in excess of the  
5 statutory maximum workweek or work period applicable to the  
6 employee under the Fair Labor Standards Act (29 U.S.C. Secs.  
7 201 to 219, inclusive) shall be included as special compensation  
8 and appropriately defined in those regulations. The retirement  
9 board shall incorporate in its definitions of special compensation,  
10 applicable provisions of Section 571 of Article 4 of Subchapter 1  
11 of Chapter 2 of Division 1 of Title 2 of the California Code of  
12 Regulations.

13 (6) Special compensation does not include any of the  
14 following:

15 (A) Final settlement pay.

16 (B) Payments made for additional services rendered outside of  
17 normal working hours, whether paid in lump sum or otherwise.

18 (C) Any other payments the retirement board has not  
19 affirmatively determined to be special compensation.

20 (d) Notwithstanding any other provision of law, payrate and  
21 special compensation schedules, ordinances, or similar  
22 documents shall be public records available for public scrutiny.

23 (e) (1) As used in this chapter, “group or class of  
24 employment” means a number of employees considered together  
25 because they share job similarities, work location, collective  
26 bargaining unit, or other logical work related grouping. Under no  
27 circumstances shall one employee be considered a group or class.

28 (2) Increases in compensation earnable granted to any  
29 employee who is not in a group or class shall be limited during  
30 the final compensation period applicable to the employee, as well  
31 as the two years immediately preceding the final compensation  
32 period, to the average increase in compensation earnable during  
33 the same period reported by the city for all employees who are in  
34 the same membership classification.

35 (f) As used in this chapter, “final settlement pay” means any  
36 pay or cash conversions of employee benefits that are in excess  
37 of compensation earnable, that are granted or awarded to a  
38 member in connection with or in anticipation of a separation  
39 from employment. The retirement board shall promulgate  
40 regulations that delineate more specifically what constitutes final

1 settlement pay. The retirement board shall incorporate in its  
2 definitions of final settlement pay applicable provisions of  
3 Section 570 of Article 4 of Subchapter 1 of Chapter 2 of Division  
4 1 of Title 2 of the California Code of Regulations.

5 45353. Notwithstanding any other provision of this chapter,  
6 “final compensation” of a member for the purpose of determining  
7 any pension or benefit resulting from service as an elective or  
8 appointed mayor or member of a city legislative body accrued  
9 while in membership, shall be based on the highest average  
10 annual compensation earnable by the member during the period  
11 of service in each elective or appointed office. If that elective or  
12 appointed service is a consideration in the computation of any  
13 pension or benefit, the member may have more than one final  
14 compensation.

15 This section shall apply to a member first elected or appointed  
16 as mayor or member of a city legislative body on or after January  
17 1, 2006, or elected or appointed to a term of office not  
18 consecutive with the term of office held on January 1, 2006.

19 45354. If the compensation of a member is a factor in any  
20 computation to be made under this chapter, there shall be  
21 excluded from those computations any compensation based on  
22 overtime put in by a member whose service retirement allowance  
23 is a fixed percentage of final compensation for each year of  
24 credited service. For the purposes of this chapter, overtime is the  
25 aggregate service performed by an employee as a member in all  
26 categories of employment in excess of the hours of work  
27 considered normal for employees on a full-time basis, and for  
28 which monetary compensation is paid.

29 If a member concurrently renders service in two or more  
30 positions, one or more of which is full time, service in the  
31 part-time position shall constitute overtime. If two or more  
32 positions are permanent and full time, the position with the  
33 highest payrate or base pay shall be reported to the retirement  
34 system. This provision shall apply only to service rendered on or  
35 after January 1, 2006.

36 45355. (a) The obligations of the retirement system to its  
37 members continue throughout their respective memberships, and  
38 the obligations of the retirement system to and in respect to  
39 retired members continue throughout the lives of the respective  
40 retired members, and thereafter until all obligations to their

1 respective beneficiaries under optional settlements have been  
2 discharged. The obligations of the city to the retirement system in  
3 respect to members employed by them, respectively, continue  
4 throughout the memberships of the respective members, and the  
5 obligations of the city to the retirement system in respect to  
6 retired members formerly employed by them, respectively,  
7 continue until all of the obligations of the retirement system in  
8 respect to those retired members, respectively, have been  
9 discharged. The obligations of any member to the retirement  
10 system continue throughout his or her membership, and  
11 thereafter until all of the obligations of the retirement system to  
12 or in respect to him or her have been discharged.

13 (b) For the purposes of payments into or out of the retirement  
14 fund for adjustment of errors or omissions, the period of  
15 limitation of actions shall be three years, and shall be applied as  
16 follows:

17 (1) In cases in which the retirement system makes an  
18 erroneous payment to a member or beneficiary, the system's  
19 right to collect shall expire three years from the date of payment.

20 (2) In cases in which the retirement system owes money to a  
21 member or beneficiary, the period of limitations shall not apply.

22 (3) In cases in which payment is erroneous because of the  
23 death of the retired member or beneficiary or because of the  
24 remarriage of the beneficiary, the period of limitation shall  
25 commence with the discovery of the erroneous payment.

26 (c) Notwithstanding subdivision (b), if any payment has been  
27 made as a result of fraudulent reports for compensation made, or  
28 caused to be made, by a member for his or her own benefit, the  
29 period of limitation shall be 10 years, and that period shall  
30 commence from either the date of payment or upon discovery of  
31 the fraudulent reporting, whichever is later.

32 (d) The retirement board shall determine the applicability of  
33 the period of limitations in any case, and its determination with  
34 respect to the running of any period of limitation shall be  
35 conclusive and binding for purposes of correcting the error or  
36 omission.

37 45356. Any city that fails to enroll an employee into  
38 membership when he or she becomes eligible, or within 90 days  
39 thereof, when the city knows or can reasonably be expected to  
40 have known of that eligibility, shall be required to pay all arrears

1 costs for member contributions and administrative costs of five  
2 hundred dollars (\$500) per member as a reimbursement to the  
3 system's current year budget.

4 45357. (a) Except as otherwise provided in this chapter, and  
5 as provided in subdivision (b), persons rendering professional  
6 legal services to a city are excluded from membership.

7 (b) Subdivision (a) does not apply to a person holding the  
8 office of city attorney, the office of assistant city attorney, or an  
9 established position of deputy city attorney.

10 45358. The provisions of this article, including, but not  
11 limited to, the provisions of Sections 45353 and 45354  
12 addressing service provided on and after January 1, 2006, shall  
13 apply to persons first retiring on and after January 1, 2007.

14 SEC. 13. Article 1.55 (commencing with Section 53224.1) is  
15 added to Chapter 2 of Part 1 of Division 2 of Title 5 of the  
16 Government Code, to read:

17  
18 Article 1.55. Retirement Benefit Calculation  
19

20 53224.1. (a) "Compensation" means the remuneration paid  
21 out of funds controlled by the local agency in payment for the  
22 member's services performed during normal working hours or  
23 for time during which the member is excused from work because  
24 of any of the following:

25 (1) Holidays.

26 (2) Sick leave.

27 (3) Industrial disability leave, during which benefits are  
28 payable pursuant to Section 4850 of the Labor Code.

29 (4) Vacation.

30 (5) Compensatory time off.

31 (6) Leave of absence.

32 (b) When compensation is reported to the retirement board, the  
33 local agency shall identify the pay period in which the  
34 compensation was earned regardless of when reported or paid.  
35 Compensation shall be reported in accordance with Section  
36 53224.3 and shall not exceed compensation earnable, as defined  
37 in Section 53224.3.

38 53224.2. "Labor policy or agreement" means any written  
39 policy, agreement, memorandum of understanding, legislative  
40 action of the local agency legislative body, or any other



document used by the local agency to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

53224.3. (a) “Compensation earnable” by a member means the payrate and special compensation of the member, as defined by subdivisions (b) and (c).

(b) (1) “Payrate” means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. “Payrate” for a member who is not in a group or class means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours. “Payrate” includes:

(A) Any amount deducted from a member’s salary for any of the following:

(i) Participation in a deferred compensation plan established pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 457 of the Internal Revenue Code.

(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of the Internal Revenue Code.

(iv) Participation in a flexible benefits program.

(B) Any payment in cash by the local agency to one other than an employee for the purpose of purchasing an annuity contract for a member under an annuity plan that meets the requirements of Section 403(b) of the Internal Revenue Code.

(C) Employer “pick up” of member contributions that meets the requirements of Section 414(h)(2) of the Internal Revenue Code.

(D) Any disability or workers’ compensation payments to safety members in accordance with Section 4850 of the Labor Code.

(2) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(3) The computation for time prior to entering local agency service shall be based on the compensation earnable by him or her in the position first held by him or her in that service.

(c) (1) Special compensation of a member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate.

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the retirement board, the local agency shall identify the pay period in which the special compensation was earned.

(4) The monetary value of any service or noncash advantage furnished by the local agency to the member, except as expressly and specifically provided in this chapter, shall not be special compensation unless regulations promulgated by the retirement board specifically determine that value to be “special compensation.”

(5) The retirement board shall promulgate regulations that delineate more specifically and exclusively what constitutes “special compensation” as used in this section. A uniform allowance, the monetary value of local agency-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under the Fair Labor Standards Act (29 U.S.C. Secs. 201 to 219, inclusive) shall be included as special compensation and appropriately defined in those regulations. The retirement board shall incorporate in its definitions of special compensation, applicable provisions of Section 571 of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations.

(6) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

1 (C) Any other payments the retirement board has not  
2 affirmatively determined to be special compensation.

3 (d) Notwithstanding any other provision of law, payrate and  
4 special compensation schedules, ordinances, or similar  
5 documents shall be public records available for public scrutiny.

6 (e) (1) As used in this chapter, “group or class of  
7 employment” means a number of employees considered together  
8 because they share job similarities, work location, collective  
9 bargaining unit, or other logical work related grouping. Under no  
10 circumstances shall one employee be considered a group or class.

11 (2) Increases in compensation earnable granted to any  
12 employee who is not in a group or class shall be limited during  
13 the final compensation period applicable to the employee, as well  
14 as the two years immediately preceding the final compensation  
15 period, to the average increase in compensation earnable during  
16 the same period reported by the local agency for all employees  
17 who are in the same membership classification.

18 (f) As used in this chapter, “final settlement pay” means any  
19 pay or cash conversions of employee benefits that are in excess  
20 of compensation earnable, that are granted or awarded to a  
21 member in connection with or in anticipation of a separation  
22 from employment. The retirement board shall promulgate  
23 regulations that delineate more specifically what constitutes final  
24 settlement pay. The retirement board shall incorporate in its  
25 definitions of final settlement pay applicable provisions of  
26 Section 570 of Article 4 of Subchapter 1 of Chapter 2 of Division  
27 1 of Title 2 of the California Code of Regulations.

28 53224.4. Notwithstanding any other provision of this chapter,  
29 “final compensation” of a member for the purpose of determining  
30 any pension or benefit resulting from service as an elective or  
31 appointed member of a local agency legislative body accrued  
32 while in membership, shall be based on the highest average  
33 annual compensation earnable by the member during the period  
34 of service in each elective or appointed office. If that elective or  
35 appointed service is a consideration in the computation of any  
36 pension or benefit, the member may have more than one final  
37 compensation.

38 This section shall apply to a member first elected or appointed  
39 as a member of a local agency legislative body on or after

1 January 1, 2006, or elected or appointed to a term of office not  
2 consecutive with the term of office held on January 1, 2006.

3 53224.5. (a) If the compensation of a member is a factor in  
4 any computation to be made under this chapter, there shall be  
5 excluded from those computations any compensation based on  
6 overtime put in by a member whose service retirement allowance  
7 is a fixed percentage of final compensation for each year of  
8 credited service. For the purposes of this chapter, overtime is the  
9 aggregate service performed by an employee as a member in all  
10 categories of employment in excess of the hours of work  
11 considered normal for employees on a full-time basis, and for  
12 which monetary compensation is paid.

13 (b) If a member concurrently renders service in two or more  
14 positions, one or more of which is full time, service in the  
15 part-time position shall constitute overtime. If two or more  
16 positions are permanent and full time, the position with the  
17 highest payrate or base pay shall be reported to the retirement  
18 system. This provision shall apply only to service rendered on or  
19 after January 1, 2006.

20 53224.6. (a) The obligations of the retirement system to its  
21 members continue throughout their respective memberships, and  
22 the obligations of the retirement system to and in respect to  
23 retired members continue throughout the lives of the respective  
24 retired members, and thereafter until all obligations to their  
25 respective beneficiaries under optional settlements have been  
26 discharged. The obligations of the local agency to the retirement  
27 system in respect to members employed by them, respectively,  
28 continue throughout the memberships of the respective members,  
29 and the obligations of the local agency to the retirement system  
30 in respect to retired members formerly employed by them,  
31 respectively, continue until all of the obligations of the retirement  
32 system in respect to those retired members, respectively, have  
33 been discharged. The obligations of any member to the  
34 retirement system continue throughout his or her membership,  
35 and thereafter until all of the obligations of the retirement system  
36 to or in respect to him or her have been discharged.

37 (b) For the purposes of payments into or out of the retirement  
38 fund for adjustment of errors or omissions, the period of  
39 limitation of actions shall be three years, and shall be applied as  
40 follows:

1 (1) In cases in which the retirement system makes an  
2 erroneous payment to a member or beneficiary, the system's  
3 right to collect shall expire three years from the date of payment.

4 (2) In cases in which the retirement system owes money to a  
5 member or beneficiary, the period of limitations shall not apply.

6 (3) In cases in which payment is erroneous because of the  
7 death of the retired member or beneficiary or because of the  
8 remarriage of the beneficiary, the period of limitation shall  
9 commence with the discovery of the erroneous payment.

10 (c) Notwithstanding subdivision (b), if any payment has been  
11 made as a result of fraudulent reports for compensation made, or  
12 caused to be made, by a member for his or her own benefit, the  
13 period of limitation shall be 10 years, and that period shall  
14 commence from either the date of payment or upon discovery of  
15 the fraudulent reporting, whichever is later.

16 (d) The retirement board shall determine the applicability of  
17 the period of limitations in any case, and its determination with  
18 respect to the running of any period of limitation shall be  
19 conclusive and binding for purposes of correcting the error or  
20 omission.

21 53224.7. Any local agency that fails to enroll an employee  
22 into membership when he or she becomes eligible, or within 90  
23 days thereof, when the local agency knows or can reasonably be  
24 expected to have known of that eligibility, shall be required to  
25 pay all arrears costs for member contributions and administrative  
26 costs of five hundred dollars (\$500) per member as a  
27 reimbursement to the system's current year budget.

28 53224.8. (a) Except as otherwise provided in this chapter,  
29 and as provided in subdivision (b), persons rendering  
30 professional legal services to a local agency are excluded from  
31 membership.

32 (b) Subdivision (a) does not apply to a person holding the  
33 office of local agency attorney, the office of assistant local  
34 agency attorney, or an established position of deputy local  
35 agency attorney.

36 53224.9. (a) The provisions of this article, including, but not  
37 limited to, the provisions of Sections 53224.4 and 53224.5  
38 addressing service provided on and after January 1, 2006, shall  
39 apply to persons first retiring on and after January 1, 2007.

- 1 (b) The provisions of this article shall apply to all pension
- 2 trusts created pursuant to Article 1.5 (commencing with Section
- 3 53215).
- 4 SEC. 14. This act shall become operative on January 1, 2006.

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